

In the Court of Appeals of the State of Alaska

Richard DeRemer,

Appellant,

v.

State of Alaska,

Appellee.

Court of Appeals No. **A-13002**

Order

Motion for Order to Show Cause &
Motion for Continued restraining Order

Date of Notice: **7/5/2019**

Trial Court Case No. **3PA-17-01363CI, 3PA-04-02795CR,**

The Appellant, Richard DeRemer, is a prisoner in state custody who represents himself in this appeal. On March 21, 2019, Mr. DeRemer filed a request that this Court grant a restraining order to prevent the Department of Correction from enforcing a policy — Policy 811.05 — that restricts the amount of “legal property” he may possess while actively litigating on-going legal actions. Mr. DeRemer essentially argued that this Department policy violates his right of access to the courts.

Based on the information Mr. Deremer provided, on April 3, 2019 this Court temporarily restrained the Department from enforcing the policy, but also allowed the Department to respond to Mr. DeRemer’s motion.

In its response, the Department contends that Mr. DeRemer’s request was based on a miscommunication of DOC’s policy. The Department explained that in a March 29, 2019 memo, the Department clarified that in addition to the standard one legal box, prisoners could request an additional legal box for pending litigation. According to the Department, Mr. DeRemer has not, as yet, requested approval under the policy for an additional legal box. However, the Department sees no reason why such a request would

not be granted, if requested. The Department has also submitted an affidavit dated May 19, 2019 attesting that, in accordance with this Court’s temporary restraining order, that Mr. DeRemer’s excess legal material had not been removed from his cell.

However, soon after the Department filed its response, Mr. DeRemer filed another pleading, indicating that he had been written up for a rule infraction and moved into segregation. According to Mr. DeRemer, the property in his cell — including his legal property — was seized, and on May 24, 2019, Mr. DeRemer was provided with notice that his seized property was considered excess, and that if he did not dispose of it with 90 days, the property would be destroyed. It appears that some (if not all) of Mr. DeRemer’s legal property is on the list of items to be destroyed.

The Court therefore remains concerned that Mr. DeRemer’s access to the courts may be infringed in the near future, notwithstanding this Court’s temporary restraining order and the Department’s attempt to clarify its policy.

In addition, although the Department’s response clarifies that Policy 811.05 allows Mr. DeRemer to keep a second box of legal property if he requests to do so, and if that request is granted, other aspects of the policy still remain unclear. In its response, the Department states that “a prisoner can store additional legal boxes with GCCC’s property unit, and can switch out legal boxes as needed.” But the policy itself suggests that “permanent secure storage of personal property” is limited to “one property box or its equivalent” and does not refer to additional legal boxes. The policy does indicate that legal paperwork may be stored in permanent secure storage and, unlike other property, can be rotated with the legal paperwork kept in the defendant’s cell. But this provision does not answer the question of how many legal boxes a defendant may have in secure storage and whether that is in addition to, or in lieu of, the one property box otherwise

permitted under the general policy.

The Court notes that this issue was squarely within the Court’s concern when it issued the April 3, 2019 Order. That is, the Court requested information from the Department demonstrating that the Department has established procedures for storing legal property that exceeds what the policy allows in a prisoner’s cell, and that this legal property will be stored in a manner that maintains the security of the material, and that provides a prisoner reasonable access to the material. We note that it is readily foreseeable that in some instances, a prisoner — particularly a self-represented prisoner — may need to maintain more than two boxes of legal property when litigating the prisoner’s ongoing criminal and quasi-criminal legal proceedings. However, it is not clear that the Department will accommodate such needs. It is also not clear what will happen to Mr. DeRemer’s legal paperwork in light of his recent move to segregation.

Thus, to the extent that the Department currently asserts that Mr. DeRemer’s request for a restraining order is moot, this does not appear to be the case. As a general matter, the Court agrees that the Department can limit the number of boxes of personal and legal property that prisoners may maintain in their cells, and the Court also agrees that Mr. DeRemer must conform with the property policy and follow the procedures for requesting permission to maintain more than one box of legal property in his cell. However, the Court remains concerned that the policy does not sufficiently take into account a prisoner’s due process rights and access to the courts. And it appears that necessary legal paperwork may still be improperly treated as contraband under the policy without a procedure in place to ensure that such paperwork is properly stored and maintained.

In light of the current uncertainty about the Department’s policy, this Court again

concludes that there is a substantial probability that the Department's legal property limitation infringes Mr. DeRemer's right of access to the courts. This Court also concludes that the Department will face only minimal administrative hardship if this Court orders the Department to not implement the policy limiting the amount of legal property in Mr. DeRemer's case until his on-going litigation, including this appellate case, is complete.

That said, if the Court has misconstrued the policy regarding secure storage, the Department may file another pleading more fully explaining all aspects of the policy as it relates to legal paperwork.

The current restraining order remains in effect, and is modified as described below:

1. Effective immediately, the Department of Corrections shall not enforce Policy 811.05 (as revised or clarified by the memorandum dated 3/29/2019) limiting Mr. DeRemer's "legal property" in Mr. DeRemer's on-going legal cases, to include legal property maintained in secure storage. In particular, the Department shall not destroy or otherwise dispose of Mr. DeRemer's legal property that the Department considers in excess of the policy's property limit. The legal property that is stored will be stored in a manner that maintains the security of the property, and the Department will provide Mr. DeRemer access to the material as provided under the current policy.

2. Mr. DeRemer shall conform with the Department's property policy or policies and shall request permission to maintain a second box of legal property in his cell.

3. If, in the future, either Mr. DeRemer or the Department believes that a modification of this order is necessary, they may apply to this Court.

4. The Clerk of the Appellate Court shall serve a copy of this Order on the both the Department of Corrections and the Office of Criminal Appeals.

Entered at the direction of Chief Judge Allard.

Clerk of the Appellate Courts

Sarah Anderson, Deputy Clerk

cc: Office of the Commissioner
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